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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No. 910 of 1998

Petitioner Bundram, S/o. Thandram by Caste Aghariya Aged about 72 years, resident of Village Lailunga, Tahsil Gharghoda, Distt. Raigarh.

Versus

Respondents

1. State of Madhya Pradesh Through Secretary, Revenue Department, Vallabh Bhawan, Bhopal.
2. The Collector, Raigarh, Dist. Raigarh. M.P.
3. The Sub Divisional Officer (Civil) , Gharghoda, Dist. Raigarh, M.P.
4. Dev Pratap Singh, S/o. Gopal Singh By Caste Raj Gond, Junadihi Village Lailunga Tah. Gharghoda, Dist. Raigarh.

Present : Shri P. Diwakar, learned Sr. Advocate with Shri Adil Minhaj, learned counsel for the petitioner.
Shri Sanjay S. Agrawal, learned G.A. for the State/respondents 1,2 and 3.
Shri V.R. Tiwari, learned counsel for respondent No.4.

ORAL ORDER
(Passed on 22.6.2006)

This writ petition is directed against the initiation of the proceedings by the Sub Divisional Officer, (Civil)Gharghoda, District Raigarh, the 3rd respondent herein, under Section 51 of the Chhattisgarh Land Revenue Code 1959 (for short 'the Code').

(2) The facts of the case in brief are as follows:

Initially one Sahaskumari belonging to Raj Gond caste was the owner of the land bearing Khasra Nos. 529/17, 502, 504/1. The said Shahaskumari sold the land in Khasra No.529/17, to one Jaidayal. The said Jaidayal in turn sold the said land to the petitioner under a registered

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sale deed dated 11.04.1967, according to the petitioner, for a valuable consideration of Rs.1000/-. Likewise, lands comprised in Khasra Nos.502 and 504/1 were sold by Sahaskumari to Jaidayal. The said Jaidayal in turn sold the above lands to father of the petitioner, Thandaram, by name. After the demise of Thandaram, the petitioner claims to be in possession of all the three lands referred to above.

(3) When the matter stood thus, in the year 1986-87, a Revenue Case No.153/A-23/86-87 was registered against the petitioner by the then Sub Divisional Officer, Gharghoda on the basis of the report of the Patwari. After the enquiry, the then Sub Divisional Officer, Gharghoda, by his order dated 31.08.1987 dropped the proceedings holding that provisions of Section 165 (6) and Section 170-B of the Code are not attracted and also on the ground that the ground of fraud was not made out. Against the said order of the Sub Divisional Officer dated 31.08.1987, it is stated that no appeal or revision was preferred. When the matter stood thus, the petitioner received a notice marked as Annexure-A/3, dated 17.09.1997 from the Sub Divisional Officer fixing the date of hearing on 07.10.97 and directing the petitioner to appear for hearing in proceedings initiated under Section 51of the Code for reviewing the earlier order. The petitioner having received the notice Annexture-A/3 submitted his reply Annexure-A/4 which is not dated. It is stated by the petitioner that the Sub Divisional Officer without considering his reply and without following the procedure, posted the case for passing the final order. The petitioner ,however, has not disclosed whether the hearing was done and if it was done on what date and the date fixed by the Sub Divisional Officer for passing the final order. Be that as it may, at that stage, the present writ petition was filed before the M.P. High Court on 19.02.1998. The M.P.

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High Court while entertaining this writ petition on 19.03.1998 passed an interim order directing that all further proceedings in Revenue case No. O/A-23/96-97, pending before the Sub Divisional Officer, Gharghoda shall remain in abeyance. The above interim order passed by the M.P High Court has been in operation till date. After the formation of the new State of Chhattisgarh and this Court, the writ petition has been transmitted to this Court.

(4) I have heard Shri P. Diwakar, learned Sr. Advocate for the petitioner and Shri Sanjay S. Agrawal, learned Govt. Advocate for respondents 1 to 3/State Authorities and Shri V.R. Tiwari, learned counsel for the 4th respondent. Shri Diwakar would strenuously contend that in the facts and the circumstances of the case, the 3rd respondent utterly lacks jurisdiction to initiate proceedings under Section 51 of Act to review the earlier order made by his predecessor in office. He would high light that the then Sub Divisional Officer after conducting a detailed enquiry and on appreciation of merits, had concluded that the provisions of Section 165 (6) and 170-B of the Code are not attracted and the petitioner or his vendors did not play any fraud in purchasing the subject lands. In such facts and circumstances, the petitioner cannot be subjected to the torture of facing repeated enquiries at the hands of the Sub Divisional Officer. Shri Diwakar would also contend that the then Sub Divisional Officer by his order dated 31.08.87 dropped the proceedings initiated by him under Section 170-B of the Code, whereas after long lapse of 10 years the succeeding Sub Divisional Officer initiated the proceedings. It was pointed out that though there is no limitation to review the order under Section 51 of the Code, that power of review is required to be exercised within a reasonable time as held by the Supreme Court and High Courts.

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In support of his submission, learned Sr. Counsel would place reliance on a judgment of learned Single Judge of Madhya Pradesh High Court dated 04.02.1999, passed in W.P. No.4475/97 (Ravi Narayan Vs. State of M.P. and others).

(5) Learned Govt. Advocate appearing for the State Authorities and learned counsel appearing for the 4th respondent, per contra, would, at the threshold, point out that the writ petition is misconceived and not maintainable. It was pointed out that the Sub Divisional Officer, the 3rd respondent herein, must have obtained sanction in writing of the Competent Authority as required under clause (i) of sub-Section (1) of Section 51 of the Code before registering the revenue case and issuing the impugned notice to the petitioner and the petitioner has not questioned the sanction order and therefore, he could not, at this stage, make any grievance against the very initiation of the proceedings. It was also contended that normally this Court is not entertaining the writ petition against the statutory show-cause or initiation of proceedings, unless it is shown that the initiation of the proceedings is by an incompetent authority or officer. It was contended that it cannot be said that the 3rd respondent inherently lacks jurisdiction to initiate the proceedings to review the order under Section 51 of the Code. It was also contended that there are valid grounds for the 3rd respondent to review the earlier order made by his predecessor in office.

(6) Having heard learned counsel for the parties, a short question that arises for decision-making is whether any case is made out by the petitioner to issue writ of prohibition to injunct the 3rd respondent from proceeding further in pursuance of the notice of the proceedings

initiated under Section 51 of the Code. It needs to be noticed that the Code itself is a Code of legal remedies also. It is not that the aggrieved parties do not have any legal remedies to be pursued by way of appeal and/or revision. It is true that earlier order was made by the then Sub Divisional Officer on 31.08.1987 under Section 170-B of the Code. It cannot be said that the order made by the then Sub Divisional Officer could not be reviewed by the succeeding Sub Divisional Officer under Section 51 of the Code. Since the earlier order dated 31.08.87 was made by the then Sub Divisional Officer in terms of clause (i) of sub-Section (1) of Section 51 of the Code, prior sanction of the Competent Authority in writing was a must for initiating the proceedings under Section 51 of the Code. It is obvious that the 3rd respondent must have initiated the proceedings after obtaining prior sanction of the Competent Authority in terms of clause(i) of sub-Section (1) of Section 51of the Code. Of course, the pleading is imprecise and scanty and it does not give full particulars of the case. There is also a lapse on the part of the respondents-authorities in not placing the relevant materials and information before the Court expected of them. The respondents have not bothered to file their pleadings also though the writ petition is of the year 1998. Be that as it may, it is not the case of the petitioner that the 3rd respondent initiated proceedings under Section 51 of the Code without obtaining prior sanction in writing of the Competent Authority as required under clause(i) of sub-Section (1) of Section 51of the Code. It is always presumed that the Public Authorities and Statutory Authorities function in accordance with law unless it is otherwise pointed out by satisfactory materials.Therefore, there is no reason for this Court to think that the 3rd respondent has initiated the

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proceedings without obtaining prior sanction in writing of the Competent Authority under the clause(i) of sub-Section (1) of Section 51of the Code.

(7) I find considerable force in the submission of learned Govt. Advocate. The order of the Competent Authority according sanction in writing is not a part of the proceedings initiated by the Sub Divisional Officer to review the earlier order passed by his predecessor in office. The sanction order is different from initiation of the proceedings or culmination of the proceedings initiated by the 3rd respondent by way of a final order. The order that might have been made by the Competent Authority according sanction is a statutory order and unless that order is assailed in an appropriate legal proceedings and quashed, further steps taken by the Sub Divisional Officer could not be faulted. The objective of the prescription of securing prior sanction in writing of the Competent Authority, it appears to my mind, is that an officer of the grade of Sub Divisional Officer, for any extraneous or collateral consideration should not review the order made by himself or his predecessor and exercise that power without prior sanction of a prescribed higher authority in the administrative echelon of the Revenue Department. There is no need for diluting this aspect further. The fact remains that the sanction accorded by the Competent Authority permitting the 3rd respondent to initiate the proceedings under Section 51 of the Code is not assailed and it remains unchallenged.

(8) Secondly, it needs to be noticed that is well settled that the Court, normally, should not interfere with the initiation of a statutory proceeding by issuing a show-cause notice unless it is shown that the officer or the authority who has issued notice utterly lacks legal authority to

initiate such proceedings. It is not contended or cannot be contented that the 3rd respondent inherently lacks jurisdiction to initiate proceedings under Section 51 of the Code to review the order. But, it is the case of the petitioner that since the then Sub Divisional Officer earlier had held that the provisions of 165 (6) and 170-B of the Code are not attracted and fraud on the part of the purchaser is not proved, there was no justification for the succeeding Sub Divisional Officer to initiate the proceedings. Whether there are sufficient materials to initiate the proceedings under Section 51 of the Code or whether there was justification to do so, are the matters to be thrashed out after appreciating the evidence on record that may be adduced by both the sides. At this stage itself, it needs to be noticed that it is not that the petitioner has rushed to this Court immediately after he received impugned notice. In pursuance of the notice, he submitted his reply putting-forth his defences against the impugned proceedings and it appears that he also participated in the hearing held on 07.10.1997 though the pleading in that regard is very vague. The issue that falls for decision on merit before the Sub Divisional Officer falls within the domain of protecting the rights of aboriginal tribals and agriculturists. There should be fair consideration of the issue on merit. It will be totally inappropriate for this Court to interdict the very initiation proceedings on the specious ground that on an earlier occasion the then Sub Divisional Officer had dropped the proceedings. The wisdom of the law-maker in enacting Section 51 of the Code enabling the Sub Divisional Officer to review the earlier orders made under the same provisions could not be questioned either directly or indirectly.

(9) It is true, as contended by Shri P. Diwakar, learned Sr. Counsel appearing for the petitioner that though Section 51 of the Code

does not prescribe any limitation for exercising the review power. That power has to be exercised within a reasonable time as held by the Apex Court and the High Courts in large number of pronouncements. This point could also be raised before the Sub Divisional Officer for consideration.

10) The Judgment of a learned Single Judge of M.P. High Court, noted above and cited by Shri P. Diwakar, can be distinguished on facts. I have perused the said judgment. That was a case where the purchaser had purchased the subject land therein after obtaining necessary sanction from the Collector of the District concerned. In the earlier enquiry held by the Sub Divisional Officer, it was recorded on the basis of the evidence that the alienation of the land was in accordance with law. As pointed out *supra*, the pleadings in this case are scanty and unsatisfactory. Many relevant materials which are *germane* to the decision-making are not forthcoming from the pleadings, for eg., what is the extent of land comprised in Khasra Nos. 529/17, 502 and 504/1 is not stated. Furthermore, what was the consideration paid with regard to the land comprised in Khasra Nos. 502 and 504/1 was also not stated. The extent of land and the consideration paid, it is trite, undeniably are relevant considerations for deciding on the validity of sale transaction. That is why, as noted above, I thought there should be a fair consideration of the case in the interest of both the parties. This Court is incapable of forming any opinion on such scanty and unsatisfactory materials placed before the Court. In that view of the matter, after necessary reflection, I think that it is not a fit case to stall the proceedings initiated by the Sub Divisional Officer by a writ of prohibition without appreciating the merits of the matter. In that view of the matter, I dismiss the writ petition with no order as to costs. The 3rd respondent-Sub Divisional Officer is directed to consider the reply

already filed by the petitioner, if any, give the parties fair opportunity to submit their respective case and appreciate the evidence produced by them and pass appropriate order, in accordance with law, at an early date. It is, however, directed that the status-quo that obtains as on today with regard to possession of the subject property shall be maintained till the 3rd respondent disposes of the proceedings. After receipt of a copy of this order, before taking any further step and conducting any hearing, the 3rd respondent shall issue notice of hearing to the parties.

Sd/-
Chief Justice